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OGC 81-08435

5 OCT 1981

MEMORANDUM FOR: Director of Central Intelligence
THROUGH: Deputy Director of Central Intelligence
FROM: [REDACTED]
General Counsel
SUBJECT: Proposed Employment Contracts in
Connection with [REDACTED] Situation

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1. Pursuant to your request of 30 September 1981, attached at Tab A for your consideration is a draft employment contract.

2. The new contract is nothing more than a slight variation of the standard secrecy agreement which all CIA employees are required to sign upon entrance on duty. Paragraph 4 in the attached draft expands the prepublication obligation to include the requirement that employees notify the Agency concerning post-employment activities involving foreign governments and similar organizations. Paragraph 6 expands the existing secrecy agreement to elaborate on the purpose of this obligation, stating that such review of post-employment activities is undertaken to protect the Agency's effective operation and the national security.

3. We have chosen this particular route because we are confident that such a contract will pass constitutional muster since the Supreme Court in Snepp has specifically blessed it. In my judgment the proposed expansion will not affect the Supreme Court's approval of the agreement. I suggest that the attached contract be required to be executed by all current as well as prospective employees. The consideration in the case of current employees would be an assignment or continuance of employment.

4. The difficult issue to be addressed is the extent of the post-employment restrictions which should be contained in the attached draft contract. There are at least three basic options:

A. A one-year ban on certain post-employment activities followed by a requirement to report such proposed employment to the DCI for a limited period of time, for example, five years after termination of Agency service. The DCI would only raise objections if he determined that such employment is inimical to the national security.

One advantage of this option is that it tracks to a certain extent the format of the conflict of interest laws. On the other hand, this proposal poses two possible problems. First, an absolute ban on certain employment may unnecessarily limit employees and Agency flexibility. The Agency, for example, may find it useful to have a former employee accept certain employment immediately after leaving the Agency or it may have absolutely no objection to that kind of employment. Secondly, the limited reporting period will not avoid [] type problems. The concern that a former COS, for example, is working with the Libyans would be no less real if this relationship occurred in the sixth or seventh year after the individual has left the Agency;

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B. No absolute ban on post-employment activities but rather a reporting requirement as described above for a limited period of time, for example, five years.

This option avoids the problem identified with the absolute ban but is not of assistance in preventing certain activities by former Agency employees after the limited reporting period has passed;

C. No ban on post-employment activities but a lifetime reporting requirement on certain post-employment activities.

The fact that a lifetime reporting obligation is imposed may make this option seem harsh and onerous, particularly in cases where the duration or scope of an individual's activities or duties at the Agency is limited. On the other hand, it is the option which offers the best hope of avoiding inappropriate activities by former employees. This lifetime obligation in the employment area is similar to the lifetime nondisclosure and prepublication undertakings which currently exist in the secrecy agreement signed by Agency employees. Moreover, it would be expected that a majority of all post-employment reports would

cause no problem whatsoever and the employee would not be in any way disadvantaged in pursuing business activities. It would be a very small proportion of cases in which the DCI would inform the individual that the proposed employment is in fact inimical to the national security of the United States. Such a finding would, of course, be open to negotiation and legal challenge. Consequently, it is unlikely that this DCI authority would be abused. In sum, the apparent "toughness" of a lifetime reporting requirement with reference to certain types of employment is in fact tempered by the need for the DCI to demonstrate that such employment is in fact inimical to the national security.

5. The attached employment contract is currently drafted to reflect all three options described above, and can be easily revised to accommodate whatever your decision may be. It is suggested in this regard that it would be useful to call a meeting of all the Deputy Directors, the Director of Personnel, the Inspector General and the General Counsel to allow a broad cross section of opinions to surface on this issue before a final decision is reached.

6. After a decision is reached in this regard, Agency regulations setting forth guidelines and criteria to be used in determining what post-employment individuals would be prohibited must be drafted. It is imperative that any such limitations on post-employment activities be reasonable and justified in terms of potential harm to the national security. Because of the difficulty in drafting such guidelines, input and assistance from appropriate staff level personnel of all interested components should be sought in preparing these regulations.

7. In discussions with the Congress concerning this matter, I suggest that you alert them to the eventual need to provide additional benefits to employees whom we will obligate under this contract. The Congress should understand that we are obligating our employees to standards not imposed on the normal Federal employee; and in all fairness, the consideration that they are employed in a position of special trust is not adequate.

8. Attached at Tab B is a memorandum describing the steps we have taken to insure the appropriate review of individuals who enter into personal service contracts with the Agency.

9. The contractual provision at Tab C requires Agency contractors to notify the Agency contracting officer if they are approached by persons purporting to represent the CIA. This would avoid the kind of confusion which resulted when AEL and SCI produced timers for Wilson in the mistaken belief that there was Agency interest or approval in the matter.



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Attachments

Concur with recommendation that a meeting be set up to consider extent of post-employment and reporting obligations.

Director of Central Intelligence

Date

Approve steps outlined in Tab B.

Director of Central Intelligence

Date

Approve contractual provision in Tab C.

Director of Central Intelligence

Date

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SECRECY AGREEMENT

1. I, _____ (print full name), hereby agree to accept as a prior condition of my being employed by, or otherwise retained to perform services for, the Central Intelligence Agency, or for staff elements of the Office of the Director of Central Intelligence (hereinafter collectively referred to as the "Central Intelligence Agency"), the obligations contained in this agreement.

2. I understand that, in the course of my employment or other service with the Central Intelligence Agency, I may be given access to information which is classified in accordance with the standards set forth in Executive Order 12065 as amended or superseded, or other applicable Executive Order, and other information which, if disclosed in an unauthorized manner, would jeopardize foreign intelligence activities of the United States Government. I accept that, by being granted access to such information, or by accepting certain assignments or positions within the Central Intelligence Agency, I will be placed in a position of special confidence and trust and will become obligated to protect this information from unauthorized disclosure and to refrain from using my position of trust for purposes of private personal gain to the detriment of the national security.

3. In consideration for being employed or otherwise retained to provide services to the Central Intelligence Agency, I hereby agree that I will never disclose in any form or any manner any of the following categories of information or materials to any person not authorized by the Central Intelligence Agency to receive them:

- a. information which is classified pursuant to Executive Order and which I have obtained during the course of my employment or other service with the Central Intelligence Agency;
- b. information, or materials which reveal information, classifiable pursuant to Executive Order and obtained by me in the course of my employment or other service with the Central Intelligence Agency but which, because of operational circumstances or oversight, is not formally marked as classified in accordance with such Executive Order and which I know or have reason to know has not been publicly acknowledged by the Agency;
- c. information obtained by me in the course of my employment or other service with the Central Intelligence Agency that identifies any person or organization that presently has or formerly has had a relationship with a United States foreign intelligence organization which relationship the United States Government has taken affirmative measures to conceal.

4. In further consideration for being employed in certain positions of unique trust within the Central Intelligence Agency, I hereby agree that, following termination of my service with the Central Intelligence Agency, I will:

(Option A)

- a. refrain from undertaking, for a period of one year following termination of any Agency service, any employment as an employee, agent or independent contractor of any military, police, intelligence, security, or other similar organization of any foreign government, international organization of governments, or foreign organized resistance movement;
- b. report, for a period of four years following the one-year period of paragraph a above, any proposed employment as an employee, agent, or independent contractor, with a foreign government, an international organization of governments or a foreign organized resistance movement to the Agency, and refrain from undertaking such employment or service until the approval of the Central Intelligence Agency has been obtained; and
- c. report, for a period of five years following termination of my Agency service, any proposed financial transaction to be entered into either directly or indirectly with a foreign government, an international

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organization of governments or a foreign organized resistance movement, and will not participate in any such transaction until the approval of the Central Intelligence Agency has been obtained, provided that nothing herein shall require the reporting of a transaction that involves an investment in or purchase of the securities of a foreign government, nor shall this reporting requirement include a commercial transaction entered into in the ordinary course of business which does not involve materials or products of strategic interest.

(Option B)

- a. report, for a period of five years after termination of my Agency service, any proposed employment as an employee, agent, or independent contractor, with a foreign government, an international organization of governments or a foreign organized resistance movement to the Agency, and refrain from undertaking such employment or service until the approval of the Central Intelligence Agency has been obtained; and
- b. report, for a period of five years following termination of my Agency service, any proposed financial transaction to be entered into either directly or indirectly with a foreign government, an international

organization of governments or a foreign organized resistance movement, and will not participate in any such transaction until the approval of the Central Intelligence Agency has been obtained, provided that nothing herein shall require the reporting of a transaction that involves an investment in or purchase of the securities of a foreign government, nor shall this reporting requirement include a commercial transaction entered into in the ordinary course of business which does not involve materials or products of strategic interest.

(Option C)

a. report, at any time after termination of my Agency service, any proposed employment as an employee, agent, or independent contractor, with a foreign government, an international organization of governments or a foreign organized resistance movement to the Agency, and refrain from undertaking such employment or service until the approval of the Central Intelligence Agency has been obtained; and

b. report, at any time following termination of my Agency service, any proposed financial transaction to be entered into either directly or indirectly with a foreign government, an international organization of governments or a foreign organized resistance movement, and will not participate in any such transaction until

the approval of the Central Intelligence Agency has been obtained, provided that nothing herein shall require the reporting of a transaction that involves an investigation or purchase of the securities of a foreign government, nor shall this reporting requirement include a commercial transaction entered into in the ordinary course of business which does not involve materials or products of strategic interest.

5. As a further condition of the special confidence and trust reposed in me by the Central Intelligence Agency, I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to Executive Order, which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at anytime thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to it. I further agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency. I also understand and agree that, if I anticipate engaging in any post-employment activities described in paragraph 4 above, I will advise the Central

Intelligence Agency in writing of the nature and extent of my proposed post-employment activities. I further agree not to engage in such activities until approval of the Central Intelligence Agency has been obtained. I understand that the Agency will act within a reasonable time in considering my proposed employment or activities, and will apprise me in writing of its reasons for denying the requested employment or activity in case of disapproval.

6. I understand that the purpose of the review described in paragraph 5 is to give the Central Intelligence Agency an opportunity to determine whether the information or materials which I contemplate disclosing publicly contain any information which I have agreed not to disclose. I further understand that the review of my post-employment activities provided in paragraph 5 is necessary to protect the national security and the effective operation of the Central Intelligence Agency. I understand that the agency will act upon the materials or information I submit pursuant to the review procedures of paragraph 5 and make a response to me within a reasonable time.

7. I understand that all information or materials which I may acquire in the course of my employment or other service in the Central Intelligence Agency which fit the descriptions set out in paragraph 3 of this agreement are and will remain the property of the United States Government. I agree to surrender all materials reflecting such information which may come into my possession or for which I am responsible because of my employment

or other service with the Central Intelligence Agency, upon demand by an appropriate official of the Central Intelligence Agency, or upon the conclusion of my employment or other service with the Central Intelligence Agency.

8. I agree to notify the Central Intelligence Agency immediately in the event that I am called upon by judicial or congressional authorities to testify about, or provide, information which I have agreed herein not to disclose.

9. I understand that nothing contained in this agreement prohibits me from reporting intelligence activities which I consider to be unlawful or improper directly to the Intelligence Oversight Board established by the President or to any successor body which the President may establish. I recognize that there are also established procedures for bringing such matters to the attention of the Agency's Inspector General or to the Director of Central Intelligence. I further understand that any information which I may report to the Intelligence Oversight Board continues to be subject to this agreement for all other purposes and that such reporting does not constitute public disclosure or declassification of that information.

10. I further understand that nothing in this agreement shall prevent my employment in any capacity by any agency or department of the United States upon the termination of my employment with the Central Intelligence Agency.

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11. I understand that any breach of this agreement by me may result in the Central Intelligence Agency taking

administrative action against me, which can include temporary loss of pay or termination of my employment or other service with the Central Intelligence Agency. I also understand that, if I violate the terms of this agreement, the United States Government may institute a civil proceeding to seek compensatory damages or other appropriate relief. Further, I understand that the disclosure of information which I have agreed herein not to disclose can, in some circumstances, constitute a criminal offense.

12. I understand that the United States Government may, prior to any unauthorized disclosure or unauthorized undertaking of employment which is threatened by me, choose to apply to any appropriate court for an order enforcing this agreement. Nothing in this agreement constitutes a waiver on the part of the United States to institute a civil or criminal proceeding for any breach of this agreement by me. Nothing in this agreement constitutes a waiver on my part of any possible defenses I may have in connection with either civil or criminal proceedings which may be brought against me.

13. In addition to any other remedy to which the United States Government may become entitled, I hereby assign to the United States Government all rights, title, and interest in any and all royalties, remunerations, and emoluments that have resulted or will result or may result from any divulgence, publication or revelation of information by me which is carried out in breach of paragraph 5 of this agreement or which involves information prohibited from disclosure by the terms of this

agreement, and further assign to the United States Government all interests in any compensation or payment received by me in connection with post-employment activities in which I engage in willful violation of paragraph 4 of this agreement. Nothing in this paragraph shall preclude the Agency from obtaining injunctive relief in cases of nonwillful violations of this agreement.

14. I understand and accept that, unless I am provided a written release from this agreement or any portion of it by the Director of Central Intelligence or the Director's representative, all the conditions and obligations accepted by me in this agreement apply both during my employment or other service with the Central Intelligence Agency, and at all times thereafter.

15. I understand that the purpose of this agreement is to implement the responsibilities of the Director of Central Intelligence, particularly the responsibility to protect intelligence sources and methods, as specified in the National Security Act of 1947, as amended.

16. In any civil action which may be brought by the United States Government for breach of this agreement, I understand and agree that the law of the Commonwealth of Virginia shall govern the interpretation of this agreement.

17. Each of the numbered paragraphs and lettered subparagraphs of this agreement is severable. If a court should

find any of the paragraphs or subparagraphs of this agreement to be unenforceable, I understand that all remaining provisions will continue in full force.

18. I make this agreement in good faith, and with no purpose of evasion.

Signature

Date

The execution of this agreement was witnessed by the undersigned, who accepted it on behalf of the Central Intelligence Agency as a prior condition of the employment or other service of the person whose signature appears above.

WITNESS AND ACCEPTANCE:

Signature

Printed Name

Date

